रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

सी.जी.-डी.एल.-सा.-16122023-250712
CG-DL-W-16122023-250712

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 50] नई दिल्ली, दिसम्बर 10—दिसम्बर 16, 2023, शनिवार/अग्रहायण 19—अग्रहायण 25, 1945
No. 50] NEW DELHI, DECEMBER 10—DECEMBER 16, 2023, SATURDAY/AGRAHAYANA 19—AGRAHAYANA 25, 1945

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

पैट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 30 नवम्बर, 2023

का.आ. 1870.—जबकि भारत सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि हरियाणा राज्य में सुल्तानपुर–झज्जर-हिसार प्राकृतिक गैस पाईपलाईन (एस जे एच पी एल) के माध्यम से प्राकृतिक गैस के परिवहन के लिए गेल (इण्डिया) लिमिटेड द्वारा एक पाईपलाईन बिछाई जानी चाहिए ;

और भारत सरकार को उक्त पाईपलाईन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उस भूमि में, जिसमें उक्त पाईपलाईन बिछाए जाने का प्रस्ताव है और जो इस अधिसूचना में संलग्न अनुसूची में वर्णित है, उपयोग के अधिकार का अर्जन किया जाए ;

अत: अब, भारत सरकार, पैट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकर का अर्जन) अधिनियम, 1962 (1962 का 50) कि धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको उक्त अधिनियम की धारा 3 की उपधारा (1) के अधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियों साधारण जनता को उपलब्ध कर दी जाती है, 21 दिन के भीतर, भूमि के नीचे पाईपलाईन बिछाए जाने की संबंध में, सक्षम प्राधिकारी, गेल (इण्डिया) लिमिटेड, हरियाणा राज्य, को लिखित रूप में आक्षेप भेज सकेगा।

सुल्तानपुर-झज्जर-हिसार गैस पाईपलाईन परियोजना

अनुसूची

राज्य -हरियाणा

जिला	तहसील	गाँव	खसरा संख्यां	क्षेत्रफल		
				हेक्टेयर	आर	वर्ग मीटर
झज्जर	झज्जर	गुढ़ा	46//19	00	04	01
			कुल=	**00**	**04**	**01**
हिसार	हांसी	ढन्ढेरी	30//24	00	02	60
			30//17	00	09	03
			30//14	00	09	03
			30//7	00	09	03
			30//4	00	06	31
			30//3	00	05	87
			2//23	00	05	38
			2//22	00	10	02
			2//21	00	10	02
			1//25	00	05	92
			35//12	00	00	15
			35//13	00	08	75
			35//14	00	14	71
			35//24	00	09	02
			35//25/2	00	04	65
			47//1	00	03	73
			47//2	00	03	24
			कुल=	**01**	**17**	**46**
हिसार	हिसार	भगाना	50//24	00	04	11
			50//18	00	11	56
			50//13	00	01	29
			50//12	00	05	99
			50//11	00	05	03
			51//14	00	05	69
			51//16	00	03	69

			51//17	00	00	30
			51//8/2	00	00	29
			38//25	00	11	10
			52//5	00	00	09
			38//24	00	04	59
			52//4	00	04	08
			52//3/2	00	08	44
			52//3/1	00	00	31
			52//8/1	00	00	88
			52//8/2	00	04	68
			52//9	00	10	77
			52//12	00	00	51
			52//11	00	09	73
			52//10/1	00	01	17
			53//15	00	10	87
			53//14	00	05	25
			53//17/1	00	04	71
			29//16	00	06	28
			29//17/1	00	02	66
			29//14	00	03	03
			29//15	00	05	77
			29//7	00	01	83
			53//13/1/1	00	03	75
			53//12/2	00	00	64
			53//9/2	00	03	88
			53//10	00	00	63
			53//1/1	00	03	92
			54//5/1	00	00	58
हिसार	हिसार	भगाना	36//25/1	00	03	97
			36//24	00	00	51
			36//17/2	00	03	96
			36//18	00	00	54
			36//13/1	00	03	98
			36//12	00	00	58
			36//9/2	00	03	96
			36//10	00	00	52

	36//1/1	00	03	86
	29//25/1/1	00	04	52
	77//24	00	01	71
	77//1	00	09	25
	78//4	00	03	00
	77//17	00	09	07
	77//14	00	09	07
	77//7	00	08	59
	77//8	00	01	07
	77//4	00	00	31
	77//3	00	09	63
	77//2/2	00	08	13
	77//2/1	00	00	43
	कुल=	**02**	**34**	**75**

[फा. सं. एल-14014/67/2022-जी-पी-II(ई-42162)]

रामजीलाल मीना, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 30th November, 2023

S.O. 1870.—Whereas it appears to Government of India that it is necessary in public interest that for transportation of natural gas through Sultanpur–Jhajjar–Hisar Natural Gas Pipeline (SJHPL) in the State of Haryana, a pipeline should be laid by GAIL (India) Limited;

And, whereas it appears to Government of India that for the purpose of laying the said pipeline, it is necessary to acquire the Right of User in the land under which the said pipeline is proposed to be laid and which is described in the schedule annexed to this notification;

Now, therefore, in exercise of powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, (50 of 1962) Government of India hereby declares its intention to acquire the Right of User therein;

Any person interested in the land described in the said Schedule may, within twenty one days from the date of which the copies of the notification issued under sub– section (1) of Section 3 of the said Act, as published in the Gazette of India are made available to the general public, object in writing to the acquisition of the right of User therein for laying of the pipeline under the land to Competent Authority, GAIL (India) Limited, State of Haryana.

SULTANPUR - JHAJJAR - HISAR GAS PIPELINE PROJECT

SCHEDULE

State : HARYANA						
District	**Tehsil**	**Village**	**Survey No.**	**Area**		
				Hect.	**Are**	**Sq. mt.**
JHAJJAR	JHAJJAR	GUDHA	46//19	00	04	01
			TOTAL	**00**	**04**	**01**
HISAR	HANSI	DHANDHERI	30//24	00	02	60
			30//17	00	09	03
			30//14	00	09	03
			30//7	00	09	03
			30//4	00	06	31
			30//3	00	05	87

			2//23	00	05	38
			2//22	00	10	02
			2//21	00	10	02
			1//25	00	05	92
			35//12	00	00	15
			35//13	00	08	75
			35//14	00	14	71
			35//24	00	09	02
			35//25/2	00	04	65
			47//1	00	03	73
			47//2	00	03	24
			TOTAL	**01**	**17**	**46**
HISAR	HISAR	BHAGANA	50//24	00	04	11
			50//18	00	11	56
			50//13	00	01	29
			50//12	00	05	99
			50//11	00	05	03
			51//14	00	05	69
			51//16	00	03	69
			51//17	00	00	30
			51//8/2	00	00	29
			38//25	00	11	10
			52//5	00	00	09
			38//24	00	04	59
			52//4	00	04	08
			52//3/2	00	08	44
			52//3/1	00	00	31
			52//8/1	00	00	88
			52//8/2	00	04	68
			52//9	00	10	77
			52//12	00	00	51
			52//11	00	09	73
			52//10/1	00	01	17
			53//15	00	10	87
			53//14	00	05	25
			53//17/1	00	04	71
			29//16	00	06	28
HISAR	HISAR	BHAGANA	29//17/1	00	02	66
			29//14	00	03	03
			29//15	00	05	77
			29//7	00	01	83
			53//13/1/1	00	03	75
			53//12/2	00	00	64
			53//9/2	00	03	88
			53//10	00	00	63
			53//1/1	00	03	92
			54//5/1	00	00	58
			36//25/1	00	03	97
			36//24	00	00	51
			36//17/2	00	03	96
			36//18	00	00	54
			36//13/1	00	03	98
			36//12	00	00	58
			36//9/2	00	03	96
			36//10	00	00	52
			36//1/1	00	03	86
			29//25/1/1	00	04	52
			77//24	00	01	71

	77//1	00	09	25
	78//4	00	03	00
	77//17	00	09	07
	77//14	00	09	07
	77//7	00	08	59
	77//8	00	01	07
	77//4	00	00	31
	77//3	00	09	63
	77//2/2	00	08	13
	77//2/1	00	00	43
	TOTAL	**02**	**34**	**75**

[F. No. L-14014/67/2022-GP-II(E-42162)]

RAMJI LAL MEENA, Under Secy.

नई दिल्ली, 30 नवम्बर, 2023

का.आ. 1871.—भारत सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. **1603 (अ)** तारीख **28.03.2023** जो भारत के असाधारण राजपत्र तारीख **03.04.2023**, में प्रकाशित की गयी थी, दूवारा उस अधिसूचना से संलग्न अनुसूर्ची में विनिर्दिष्ट भुमि में गेल (इण्डिया) लिमिटेड दवारा गुजरात राज्य में दहेज-ऊरान पनवेल - दाबोल प्राकृतिक गेस पाइपलाइन के माध्यम से प्राकृतिक गैस के परिवहन के लिए पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी;

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को उपलब्ध करा दी गई थी;

और सक्षम प्राधिकारी ने जनता से प्राप्त आक्षेपों को परीक्षण के उपरांत निपटान कर दिया है:

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन भारत सरकार को अपनी रिपोर्ट दे दी है;

और भारत सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात् और यह संतुष्ट हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उस में उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अतः अब, भारत सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिदिष्ट भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाता है:

और, भारत सरकार, उक्त अधिनियम की धारा 6 कि उपधारा (4) द्ववारा प्रदत्त्त शक्तियों का प्रयोग करते हुए, निर्देश देती है कि पाइपलाइन बिछाने के लिए भूमि में उपयोग का अधिकार, इस घोषणा के प्रकाशन की तारीख से, भारत सरकार में निहित होने के बजाए, सभी विल्लंगमों से मुक्त होकर, गेल (इण्डिया) लिमिटेड में निहित होगा।

दहेज–उरान पाइपलाइन परियोजना

दहेज से उरान

अनुसूची

राज्य– गुजरात						
जनपद	**तहसील**	**ग्राम**	**सर्वे नं**	**क्षेत्रफल**		
				हेक्टेयर–आर–वर्ग मीटर		
1	**2**	**3**	**4**	**5**		
सुरत	चोर्यासी	उमबेर	256	0	1	36
			257	0	50	94

			258	0	42	26
			288	0	16	30
			289	0	13	94
			290	0	6	79
			291	0	23	33
			306	0	20	33

[फा. सं. एल-14014/160/2021-जी-पी-II(ई-40357)]

रामजीलाल मीना, अवर सचिव

New Delhi, the 30th November, 2023

S.O. 1871.—Whereas by notification of Government of India in the Ministry of Petroleum and Natural Gas **S.O. No. 1603 (E)** Dated **28.03.2023** issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, (50 of 1962) (hereinafter referred to as the said Act), Published in the Extra Ordinary Gazette of India dated **03.04.2023** , the Government of India declared its intention to acquire the Right of User in the land specified in the Schedule appended to that notification for the purpose of laying pipeline for transportation of natural gas through Dahej-Uran Panvel - Dhabol Natural Gas Pipeline in the State of **Gujarat** by GAIL (India) Limited

And whereas copies of the said Gazette notification were made available to the public;

And whereas the objections received from the public to the laying of the pipeline have been considered and disposed of by the Competent Authority;

And whereas the competent Authority has under sub-section (1) of section 6 of the said Act, submitted its report to Government of India;

And whereas Government of India after considering the said report and on being satisfied that the said land is required for laying the pipeline , has decided to acquire the Right of User therein;

Now, therefore, in exercise of powers conferred by sub-section (1) of section 6 of the said Act, Government of India hereby declares that the Right of User in the land specified in the Schedule appended to this notification is hereby acquired for laying the pipeline;

And, further, in exercise of powers conferred by sub-section (4) of section 6 of the said Act, Government of India hereby directs that the Right of User in the land for laying the pipeline shall, instead of vesting in Government of India, vest, on this date of the publication of the declaration, in the GAIL (India) Limited, free from all encumbrances.

Dahej-Uran Pipeline Project

Dahej to Uran

SCHEDULE

State : Gujarat						
District	**Tehsil**	**Village**	**Survey No.**	**Area**		
				Hect.	**Are**	**Sq. mtr.**
1	**2**	**3**	**4**	**5**		
Surat	Choryasi	Umber	256	0	1	36
			257	0	50	94
			258	0	42	26
			288	0	16	30
			289	0	13	94
			290	0	6	79
			291	0	23	33
			306	0	20	33

[F. No.-L-14014/160/2021-GP-II(E-40357)]

RAMJI LAL MEENA, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 24 नवम्बर, 2023

का.आ. 1872.—औघोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एक्सिस बैंक लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिश्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय, **लखनऊ** के पंचाट (28/2021) प्रकाि ात करती है।

[सं. एल-12012/01/2021-आई आर (बी-I)]

सलोनी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 24th November, 2023

S.O. 1872.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 28/2021*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of Axis Bank Ltd and their workmen.

[No. L-12012/01/2021-IR(B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 28/2021

Ref. No. L-12012/01/2021-IR(B-I) dated: 15.02.2021

BETWEEN

Smt. Renu Sharma Mail id- renu0522@gmail.com

AND

1. The MD & CEO, Axis Bank Ltd.

(mail id-amitabh.chowdhrv@axishabk.com

2. The HR Head, Axis Bank Ltd.

(Mail id- rajkamal.vempati@axisbank.com)

3. The Vice President, HR, Axis Bank Ltd.

(Mail id- soonu.wadewala@axisbank.com)

4. The JGM (legal & compliance), Axis Securities Limited

(Mail id- kritika.daga@axissecurities.in)

AWARD

Heard Sri Govardhan Lal Gupta, learned counsel for claimant who has been appointed by State Legal Aid Authority and Smt. Renu Sharma who also argued her case on merit, with assistance of her husband, Sri Susheel Kumar Sharma.

Sri Shrikant Tripathi, learned counsel for respondent.

By order No. L-12012/01/2021-IR(B-I) dated: 15.02.2021the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

> *"1. Whether the action of the management of Axis Securities Ltd., to re-design the job description of the employee Ms. Renu Sharma due to closing of retail asset product is illegal and unjustified in eye of law or not?*

2 If yes, as to what relief the concerned workmen is entitled to.".

Accordingly, an industrial dispute No. 28/2021 has been registered on 01.03.2021.

In response to said reference, a claim statement has been filed by the claimant on 26.04.2021 inter alia stating therein that she was appointed as Senior Executive in the Axis Bank & Sales Limited vide a appointment letter dated 03.11.2011 in Retail Sales Vertical & Delivering in Branch Office Human Resources work.

It is further pleaded in paragraph 3, 4 & 5 of the claim petition as under:

"3. That the fact that complainant had been sent offer letter from a 3rd party i.e. IKYA Human Capital Solution (a division of Quess Corp Ltd.) on dated 31.12.2019 for job offer and the same was acknowledged by the respondent Company in subsequent emails that were sent to complainant clearly shows that complainant personal information was shared without her consent with a third party so as to undue influence and pressurize the complainant in quitting respondent Company. A copy of the third party offer letter dated 31.12.2019 is being attached herewith as Annexure No. 3 to the instant claim statement.

4. That it is needless to say that the respondent Company gave complainant an undue and conditional offer of either joining the said third party Company or joining such other job profile of the respondent company of which the complainant does not have any experience of, whatsoever. That the said act by the officials of the respondent company was done solely to force the complainant into termination as a changed job profile wherein complainant has never had any experience would any how have led to her termination. Also, the same amounts to infringement of the right to privacy of the complainant. A copy of the email of the respondent company to change job profile forcefully is attached as Annexure No. 4 to the instant claim statement

5. That it is needless to say that complainant had visited respondent office during the ongoing pandemic and had requested not to change her job profile in its entirety which would have any how led to deterioration of her job profile as well as the work delivered by respondent Company because of lack of experience of the complainant in the re-allocated field. However, to the worst of her nightmares, respondent Company's officials told the complainant that the same is a part of the strategy of the respondent company to lessen the total number of employees, owing to the pandemic. In the light of the same. It is also pertinent to take into consideration that there are a total of about 40000 employees that have been transited by the respondent Company's office in the garb of one or the other frivolous reason. That the complainant was threatened with dire consequences in case she became the whistle-blower."

In view of the above said factual background, as per averment as made in para 6 of claim petition are quoted herein below, on the basis of which in the present industrial dispute, following prayers have been prayed by claimant:

"Para 6:

6. That the complainant was terminated without any prior information/notice, without giving any opportunity of hearing, without adhering to the principles of natural justice and also without any valid proof. It is pertinent to mention here that complainant was deprived of her salary from January 2021 till the date of her termination, i.e. 02.03.2021, date despite the fact that the case was pending adjudication and was sub- judice before the conciliation officer appointed viz-a-viz by Ministry of Labour, Lucknow. A copy of the termination letter dated 02.03.2021 is being attached herewith as Annexure No. 5 to the instant claim statement. It is Needless to say that the same is violation of Section 33(1) and 33(2) of the Industrial Disputes Act, 1947. That the verbatim language of section 33 is being iterated hereunder:-

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.

1/33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.- (1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before 2[an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—*

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, concerned in such dispute, any workmen concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 2 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman),-

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

Prayer:

"1. Issue a order, or direction to the respondent company to revoke the termination order dated 02.03.2021 and reinstate the complainant in the service on the same post.

2. Issue a order to the respondent company to pay the salary from January to till the reinstation of the complainant as well as implement 5 pending promotion and grade pay

3. Issue any other suitable, order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

On behalf of the respondent a preliminary objection on the basis of which Sri Srikant Tripathi, advocate submits that reference dated 15.02.2021, sent by Appropriate Authority for adjudication is in respect to action of the management of Axis Bank to redesignate the job description of Mrs. Renu Sharma due to closing of retail product is illegal and unjustified in the eye of law or not?

Learned counsel for respondent further submits that there is no reference in respect to the prayer, made by the claimant that the order of termination dated 02.03.2021 may be revoked and she may be reinstated in service.

Accordingly, it is submitted by Sri Srikant Tripathi, learned counsel for respondent that as relief claimed by the claimant for revocation of her termination order dated 02.03.2021 and for reinstatement of her service is beyond the scope of refence so the same cannot be granted.

Smt. Renu Sharma, claimant, in response, to above said objection submits and placed reliance on para 14 and 5 of the document viz. Industrial Disputes (Central) Rules, Form-I, which are filed along with her application dated 01.09.2023 supported by an affidavit, reproduced herein below:

Para 14, 15:

"14- That the opponent has crossed the limits in the eyes of law by sending termination letter on dated 2.03.2021 on Absconding basis instead of the complainant being in regular touch of the opponent Party. Which is in complete violation of section 33(1) and (2) of the ID Act 1947. In the case of pendency, where the concerned authority haven't directed for any permission and case is pending for adjudication which is clear from letter dated 15.02.21 & 2.03.21 Of Appropriate Government(Central) & Honorable CGIT-Lucknow Court. Opposite party has no right to take action Whatsoever. A copy of termination letter sent to complainant by the opposite party. ANNEXURE NO. 6

15- That the termination stands void and it should be revoke by providing all the rights of the complainant till this date as employee till the final order. That the complainant is availing its rights by filling complaint under section 33(a) of the ID act 1947. That the verbatim language of section 33(a) is being iterated hereunder:-

**33A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.- Where an employer contravenes the provisions of section 33 during the pendency of proceedings 6 before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal), any employee aggrieved by such contravention may, make a complaint in writing. 1 in the prescribed manner,*

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in indicating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the

provisions of this Act shall apply accordingly."

The Claimant has also placed reliance on order dated 19.07.2021, passed by the Regional Labour Commissioner (Central), Lucknow, annexed with her application dated 01.09.2023 by which claimant has raised her dispute against here termination order dated 02.03.2021 u/s 2A of the Industrial Disputes (Amendment) Act, 2010, the same reads as under:

"File No. LKO 7(1-17)/2021 Dated: 19.07.2021

Certificate to be issued by the conciliation officer as provided under section 2 A of the Industrial Dispute Act, 1947

(TO WHOMSOEVER IT MAY CONCERN)

This is to certify that Mrs Renu Sharma, Lucknow filed an industrial dispute dated 27.03.2021 under section 2 A of Industrial Dispute (amendment) Act 2010 in the office of Assistant Labour Commissioner (Central)- II, Mumbai. Subsequently, this application forwarded to the Regional Labour Commissioner (Central), Lucknow consequent upon her termination from the services by the employer.

The conciliation officer took up the matter in conciliation on the dates 16.07.2021 and 19.07.2021. The workman has stated that she is not interested to continue her case in conciliation proceeding and requested to issue certificate provided under section 2 A of Industrial Dispute Act, 1947. As on date, no settlement has been reached. Now applicant wants to discontinue to the present conciliation process and to take up the matter with the Central Govt Industrial Tribunal-cum Labour Court directly under sub-section (2) and (3) of section 2A of Industrial Dispute (amendment) Act 2010. The mandatory 45 days of filing her dispute before the conciliation officer as provided under section 2A (2) of the Industrial Dispute (Amendment) Act 2010 has been completed.

This certificate is being issued to her exclusively for the purpose of enabling her to approach the Central Govt Industrial Tribunal-cum-Labour Court for adjudication of the said dispute. The workman is advised to file her dispute before the concerned CGIT-cum-Labour Court."

Accordingly, Smt. Renu Sharma in view of the facts as submitted by her in application dated 01.09.2023, supported by an affidavit and the documents which are annexed along with said affidavit, specially above mentioned facts, keeping in view order dated 19.07.2021, passed by the Regional Labour Commissioner (Central), Lucknow, the matter in regard to termination of the services of the applicant by the respondent i.e. Axis Securities by an order dated 02.03.2021 may be revoked/set aside and she may be reinstated in service on the post from which her services have been terminated, has to be decided by this Tribunal.

The claimant submits that she does not want to submit anything/anymore on the point in issue which are already been argued by her and once again emphasized that termination order dated 02.03.2021 may be cancelled and she may be reinstated with full back wages and other consequential benefits in accordance with law.

I have heard the learned counsel for parties and gone through record and also to the application dated 01.09.2023 filed by the claimant supported by an affidavit.

Before deciding the controversy involved in the present case, it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, up to a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by

the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc. (***Hariprasad Vs. A. D. Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I. Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

> "*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*
>
> Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

> *"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -*
>
> *"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the*

services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Reverting to the facts of the present case, by an order dated 15.02.2021 the following reference has been referred to this Tribunal for adjudication:

"1. Whether the action of the management of Axis Securities Ltd., to re-design the job description of the employee Ms. Renu Sharma due to closing of retail asset product is illegal and unjustified in eye of law or not?

2 If yes, as to what relief the concerned workmen is entitled to.".

In response to above said reference, as per the facts stated hereinabove, the relief which has been prayed by the claimant, as quoted hereinabove; however, once against quoted as under:

"1. Issue a order, or direction to the respondent company to revoke the termination order dated 02.03.2021 and reinstate the complainant in the service on the same post.

2. Issue a order to the respondent company to pay the salary from January to till the reinstation of the complainant as well as implement 5 pending promotion and grade pay

3. Issue any other suitable, order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

Accordingly, first and foremost question to be decided in present case, whether the relief as claimed by the claimant in present case, can be granted to her by this Tribunal as per the term of reference or not?

Answer to said question find place in the case of ***Hochtef Gammon v. Industrial Tribunal, Bhubaneswar, Orissa and ors. AIR 1964 SC 1746*** wherein it has been held as under:

"9. In dealing with this question, it is necessary to bear in mind one essential fact, and that is that the Industrial Tribunal is a Tribunal of limited jurisdiction. Its jurisdiction is to try an industrial dispute referred to it for its adjudication by the appropriate Government by an order of reference passed under s. 10. It is not open to the Tribunal to travel materially beyond the terms of reference, for it is well-settled that the terms of reference determine the scope of its power and jurisdiction from case to case. Section 10 itself had been subsequently amended from time to time. Act 18 of 1952 made substantial amendments in s. 10. One of these amendments was that s. 10(1)(d) now empowers the appropriate Government to refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule, or the Third Schedule, to a Tribunal for adjudication. In other words, under s. 10(1)(d), the appropriate Government can refer to the Industrial Tribunal not only a specific industrial dispute, but can also refer along with it matters appearing to be connected with, or relevant to, the said dispute. In that sense, the power of the appropriate Government has been enlarged in regard to the reference of industrial disputes to the Tribunal.

10. Section 10(4) which was also added by the same amending Act provides, inter alia, that the jurisdiction of the Industrial Tribunal would be confined to the points of dispute specified by the order of reference, and adds that the said jurisdiction may take within its sweep matters incidental to the said points. In other words, where certain points of dispute have been referred to the Industrial Tribunal for adjudication, it may, while dealing with the said points, deal with matters incidental thereto, and that means that if, while dealing with such incidental matters, the Tribunal feels that some persons who are not jointed to the reference should be brought before it, it may be able to make an order in that behalf under s. 18(3)(b) as it now stands.

11. Section 10(5) has now conferred power on the appropriate Government to add to the reference other establishments, groups or classes of establishments of a similar nature, if it is satisfied that these establishments are likely to be interested in, or affected by, such dispute. In other words, if industrial dispute is referred to a Tribunal for adjudication, and in the area within the territorial jurisdiction of the appropriate Government there are other establishments which would be affected by, or interested in, such a dispute, the appropriate Government may add them to the said reference either at the time when the reference is initially made, or during the pendency of the said reference proceedings; but in every case, such additions can be made before the award is submitted. Now, if such persons are added to the reference, the industrial Tribunal may in exercise of its powers under s. 18(3)(b) summon them to appear before it."

In the case of ***Pottery Mazdoor Panchayat v. Perfect Pottery Co. Ltd. & ors. AIR 1979 SC 1356***.

"5. On July 1, 1967 the respondent purported to close down the business. We say "purported", because whether the business was, truly and in fact, closed or not is a matter on which the parties have joined issue. The case of the appellant is that respondent had closed the place of business and not the business itself. After the closure, or shall we say the 'alleged closure', the Central Government on September 16, 1967, made a reference under Section 10(1)(d) of the Central Act to the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, on the following question :

Whether the employers in relation to the Poly Pather Clay Mines of Perfect Pottery Co. Ltd., Jabalpur, were justified in closing down the said mine and retrenching the following 81 workers with effect from July 1, 1967. If not, to what relief are the workmen entitled?

……

16. We are, therefore, of the view that the High Court was right in coming to the conclusion that the two Tribunals had no jurisdiction to go behind the references and inquire into the question whether the closure of business, which was in fact effected,, was decided upon for reasons which were proper and justifiable. The propriety of or justification for the closure of a business, in fact and truly effected, cannot raise an industrial dispute as contemplated by the State and Central Acts."

In the case of ***Mahendra L. Jain & ors v. Indore Development Authority & ors 2005 (1) SCC 639*** held as under"

"34. …… Furthermore, the Labour Court having derived its jurisdiction from the reference made by the State Government, it was bound to act within the four-corners thereof. It could not enlarge the scope of the reference nor could deviate therefrom. A demand which was not raised at the time of raising the dispute could not have been gone into by the Labour Court being not the subject-matter thereof."

Hon'ble Rajasthan High Court in the case of ***the Management, M/s. Rambagh Palace Hotel Ltd. V. Sate of Rajasthan 2000 (86) FLR 134*** observed as under:

"It is settled law that the Industrial Tribunal can only adjudicate the reference made to it by the Government and cannot substitute its own reference or terms of reference or even cannot go beyond the terms of the reference. It is the function of the Tribunal to answer the reference as is referred to and once the reference has been made on the demand made by the workers/union, it is incumbent on the Labour Court or Industrial Tribunal to decide the same……"

In ***Tarsem Singh vs. Judge, Labour Court & others 2008 (116) FLR 346***, it was held as under:

"8. The Labour Court cannot enlarge the scope of reference nor can it deviate therefrom. It may be observed that the Labour that the Labour Court derives its jurisdiction from the reference made by the appropriate government and, therefore, it is bound to act within the four corners of the reference.

Hon'ble Supreme Court, in the case of ***State Bank of Bikaner and Jaipur vs. Om Prakash Sharma 2006 (109) FLR 1203*** laid bare the well settled proposition of law and, in the context, categorically held as follows:

"In the instant case, the award of the Labour Court suffers from an illegality, which appears on the face of the record. The jurisdiction of the Labour Court emanated from the order of the reference. It could not have passed an order going beyond the terms of reference. While passing the award, if the Labour Court exceeds its jurisdiction, the award must be held to the suffering from a jurisdictional error. It was capable of being corrected by the High Court in exercise of its power of judicial review. He High Court, therefore, clearly fell in error in refusing to exercise its jurisdiction. The award and the judgment of the High Court, therefore, cannot be sustained …… "

Hon'ble Apex Court in ***Bhogpur cooperative Sugar Mills Ltd. vs. Harmesh Kumar (2008) 2 SCC (L&S) 128*** observed as under:

"The Labour Court derived its jurisdiction from the terms in reference. It ought to have exercised its jurisdiction within the four corners thereof."

Hon'ble Apex Court in the case of ***Osshiar Prasad & others vs Employers in Relation to Management of Sudamdih Coal Washery of M/s. BCCL, Dhanbad 2015 (144) FLR 830*** observed as under:

> *"25. It is thus clear that the appropriate Government is empowered to make a reference under section 10 of the Act only when "Industrial dispute exists" or "is apprehended between the parties". Similarly, it is also clear that the Tribunal while answering the reference has to confine its inquiry to the question(s) referred and has no jurisdiction to travel beyond the question(s) or/and the terms of the reference while answering the reference. A fortiori, no inquiry can be made on those questions, which are not specifically referred to the Tribunal while answering the reference."*

Thus, in nut shell the position of law on the point in issue can be summarized as under:

Undoubtedly the Labour Court gets its jurisdiction from the reference and it is not like the Civil Court that any one Court, which entertains every suit. The Labour Court cannot go beyond the terms of reference nor it can travel beyond the pleadings and arrogate the power to raise issues which the parties to the reference are precluded to raise. The terms of reference determine the scope of the power and jurisdiction of the Labour Court, from case to case. Whether certain points of dispute have been referred to the Industrial Tribunal for adjudication it may, while dealing with the said points, deal with matters incidental thereto. However, such power cannot be exercised by the Court/Tribunal so as to enlarge materially the scope of reference itself for the reason that the Court/Tribunal derives its jurisdiction from the order of reference passed by the appropriate Government.

In view of the above said position of law and the relief for setting aside/revoking the termination order dated 02.03.2021, is beyond the terms of reference, which cannot be adjudicated in present case as the same is not as per the term of the reference dated 15.02.2021 referred by the Appropriate Authority (quoted hereinabove) for adjudication of the present industrial dispute.

For foregoing reasons, the prayer as made by claimant, Smt. Renu Sharma, which is reproduced hereinabove, which is quoted once again:

> *"1. Issue a order, or direction to the respondent company to revoke the termination order dated 02.03.2021 and reinstate the complainant in the service on the same post.*
>
> *2. Issue a order to the respondent company to pay the salary from January to till the reinstation of the complainant as well as implement 5 pending promotion and grade pay*
>
> *3. Issue any other suitable, order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."*

Cannot be granted as the same is beyond the term of the reference dated 15.02.2021, referred by the Appropriate Government for adjudication to this Tribunal.

Reference under adjudication is answered accordingly.

Lucknow. Justice ANIL KUMAR, Presiding Officer

26th September, 2023

नई दिल्ली, 6 दिसम्बर, 2023

का.आ. 1873.—औघोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बड़ौदा यूपी ग्रामीण बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिश्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय, **लखनऊ** के पंचाट (07/2023) प्रकाि ात करती है।

[सं. एल-12011/42/2022-आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 6th December, 2023

S.O. 1873.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.07/2023*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of Baroda UP Gramin Bank and their workmen.

[No. L-12011/42/2022-IR(B-I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 07/2023

Ref. No. No. L-12011/42/2022-IR(B-I) dated 04.01.2023

G. Secy. Baroda UP Gramin Bank Vs Baroda UP Gramin Bank

BETWEEN

The General Secretary,

Baroda UP Gramin Bank, Kailashpuri Colony, Allahpur, Allahabad- 211006

…… Workman

AND

The Chairman

Baroda UP Gramin Bank,

Hqrs, Shivpur Colony, Taramandal,

Gorakhpur- 273016

……. Respondent

AWARD

By an order dated 04.01.2023 appropriate authority as referred the following reference to this Tribunal for adjudication.

SCHEDULE

"Whether the charter of demand raised by the Baroda UP Bank Employees Union Allahabad through letter dated 5th June, 2022 against the management of Boroda UP Gramin Bank, Gorakhpur is proper, legal & justified? If yes, what relief the union is entitled to and what directions, if any, are necessary in this respect?''

Accordingly ID case 07/2023 registered before this Tribunal.

Matter taken up in revised list.

None is present on behalf of appellant.

Sri A.K. Singh learned counsel for respondent is present.

After hearing learned counsel for respondent going through record the following facts are emerged out,

Thus 06.03.2023

None is present on behalf of the workman.

Sri Sharad Kumar Shukla and Sri Alok Kumar Singh Submitted representative authorization on behalf of the respondent, taken on record. Further time is granted to the workman to file statement of claim. Office is directed to issue notice to the claimant.

List on 04.05.2023.

On 27.06.2023 an order was passed, reads as under:-

Matter taken in revised list.

Sri S.K. Shukla counsel for respondent. None for claimant.

Last Opportunity is granted for claim statement.

List on 19.10.2023. Notice to claimant.

19.10.2023

Matter taken up in revised list.

None for claimant. Sri A.K. Singh for respondent.

By order dated 27.06.2023, last opportunity has been granted to the workman to file statement of claim. The claimant has neither turned nor filed statement of claim, in spite of notice, accordingly, heard learned counsel for respondent.

Judgment reserved.

Finding & conclusion

Accordingly After hearing Sri. A.K. Singh learned counsel for respondent, taking into consideration the above said fact as till date no statement of claim has been filed by the claimant in order to establish his claim as per the reference dated 04.01.2023 as well as the law laid by the Hon'ble High Court in the case of V.K. Raj Industries v. Labour court (I) and others 1981 (29) FLR 194 as under:-

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to life written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement government cannot be answered in favour of the workman and he would not be entitled to any relief.''*

So in view of the said facts as well as the judgment passed in the case of **M/s Uptron Powertronics Employees' Union Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164** by the Hon'ble Allahabad High Court has held as under:-

> *"The law has been settled by the Apex Court in case of shankar Chadravarti v. Britannia Biscuit Co. Ltd. V.K. Raj Industries v. Labour Court and Ors. Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLr that in the absence of any evidence led by the or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High court in the case of **District Administrative Committee U.P. P.A. C.C.S.C. Service v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519**: wherein it has been held as under:-

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed".*

As the workman has not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

For the foregoing reason, the case is dismissed as such the workman is not entitled for any relief.

Award as above.

Lucknow. Justice ANIL KUMAR, Presiding Officer

01.11.2023

नई दिल्ली, 11 दिसम्बर, 2023

का.आ. 1874.—औघोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिश्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय, **लखनऊ** के पंचाट (80/2021) प्रकाि ात करती है।

[सं. एल-39025/01/2023-आई आर (बी-II)]-47

सलोनी, उप निदेशक

New Delhi, the 11th December, 2023

S.O. 1874.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 80/2021*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Lucknow* as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen.

[No. L-39025/01/2023-IR(B-II)]-47

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT

JUSTICE ANIL KUMAR

PRESIDING OFFICER

I.D. No. 80/2021

BETWEEN

Sri Sanjay Kumar S/o Satyanarayan Mohilla- Lodipur Near Union Bank, Kasba Ward No. 5. District Gajipur, (U.P.)- 232329

AND

Regional Manager,

Union Bank of India, Shubhra Motel, Complex

Mahuwa Bhagh Gajipur- 257203.

AWARD

Facts of the case:

Sri Sanjay Kuamar/claimant filed claim petition dated 24.06.2016 before this Tribunal on 17.07.2021,facts in brief and relief claimed by claimant are as under:-

Workman Sanjay Kumar was appointed as peon in the Union Bank of India Regional Office Subhra Motel Complex Mahuwa Bagh Gajipur (U.P.) and he works in the said capacity till 24.06.2016.

It is also pleaded by claimant in its claim petition that on 24.06.2016 he was injured in accident, admitted in hospital at Gajipur on 17.12.2017 recovered from injury which was sustained by him thereafter approached the bank to allow him to discharge his duties however the bank does not allow him discharge his duties. On the ground that his services are terminated on 24.06.2016.

In view of the above said factual background the present claim petition has been filed under Section 2-A, with the following relief quoted herein below:-

प्रार्थना

अतः निवेदन है कि एवार्ड द्वारा निम्न उपशम दिलाये–

क– बैंक प्रबन्धन व यूनियन के मध्य हुए समझौते का पालन न करने के कारण बैंक प्रबन्धन के खिलाफ कार्यवाही की जाय।

ख– माननीय सर्वोच्च न्यायालय द्वारा पारित निर्णय के अनुसार 10 वर्षो की सेवा होने पर स्थायी घोषित किया जाय तथा दिनांक 24.06.2016 से अस्पताल में भर्ती होने के कारण कार्य पर नहीं आ सका जो मेडिकल अवकाश का उल्लघंन है 28.06.2016 से कार्य पर लिया जाय तथा वेतन आदि सभी हितलाभ दिलाया जाय।

ग– यह कि औद्योगिक विवाद अधिनियम का उल्लघंन करने के कारण सजा दिलायी जाय।

On behalf of respondent written statement was filed on 20th March 2023 in which the following preliminary objection was taken:-

Present claim statement filed under Section 2-A of the Industrial Dispute Act, 1947, is bad in the eye of law, inter-alia on the following grounds:-

(a) Because claim filed by applicant is belated one and specifically barred by the law of the limitation as such on this score application is liable to be rejected.

(b) Because applicant Sri Sanjay Kumar was not employed/appointed in the services of the Bank as such there was no question of termination of his services as mentioned in the claim statement by applicant.

(c) Because there was no employer and employee relationship between Sri Sanjay Kumar and opposite party bank at any point of time as such, he does not fall under the purview of the provisions of definition of workman as envisaged under Section 2(s), Industrial Dispute Act, 1947 as such there is no question of application of any provisions of Industrial Dispute Act,1947.

(d) Because present application is out of the purview of provisions as contained in Section 2(K) of Industrial Dispute Act, 1947.

Accordingly it is submitted by the respondent that present case filed by claimant is liable to be dismissed as barred by limitation.

I have heard learned counsel for claimant/workman Sri Vijay Vishwakarman and Sri Chandra Shekhar holding brief of Sri Gunjan Gupta on behalf of respondent and gone through the record.

In order to decide the preliminary objection, taken by respondent, it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947.

In brief which, the same are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in

March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be

adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

> "*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*
>
> Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

> *"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -*
>
> *"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.*
>
> *(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.*
>
> *(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."*

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

> *"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible*

conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

> *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer

had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and position of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has

been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

In view the above said facts as well as that the workman/Sri Sanjay Kumar cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 24.06.2016, filed the present case on 12.07.2021 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that it is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

LUCKNOW. Justice ANIL KUMAR, Presiding Officer

18.09.2023

नई दिल्ली, 13 दिसम्बर, 2023

का.आ. 1875.—औघोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार **स्टेट बैंक ऑफ इंडिया** के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिश्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण/श्रम न्यायालय **हैदराबाद** के पंचाट (16/2002) प्रकाि ात करती है।

[सं. एल-12012/248/2001- आई आर (बी-I)]

सलोनी, उप निदेशक

New Delhi, the 13th December, 2023

S.O. 1875.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.16/2002*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad* as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/248/2001- IR(B-I)]

SALONI, Dy. Director

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: **Sri IRFAN QAMAR**

Presiding Officer

Dated the 17th day of November, 2023

INDUSTRIAL DISPUTE No. 16/2002

Between:

Sri Marla Yacob,

S/o Koteswara Rao,

Mandapadu-17/133,

Gudiwada-521301 … Petitioner

And

The Assistant General Manager,

State Bank of India,

Zonal Office, Labbipeta,

Vijayawada – 520 004. …..Respondent

Appearances:

For the Petitioner : Sri B. Suman Kumar, Advocate

For the Respondent: Sri Y. Ranjeeth Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/248/2001-IR(B.I) dated 21.11.2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of State Bank of India, Vijayawada Zone in dismissing services of Shri Marla Yacob, Ex.Messenger, is justified? If not, what relief the workman is entitled?"

After receipt of the reference, it was numbered as ID No. 16/2002 and notices were issued to both the workman and the management.

2. Earlier this reference was answered by this Tribunal by a common award dated 17.5.2005, along with other batch cases, and the claim of the workman was dismissed. Workman challenged said award before the Hon'ble High Court vide WP No. 6470/2006 & batch wherein Hon'ble High Court of A.P., vide decision dated 23.6.2014 set aside the common award dated 17.5.2005 passed by Central Government Industrial Tribunal cum Labour Court, Hyderabad and directed the Respondent bank to reengage the workmen in the positions which they had been occupying prior to termination. Being aggrieved by the said order in WP No. 6470/2006 & batch, Respondent bank preferred appeal WA Nos.1268/2014 and batch cases wherein Division Bench of Hon'ble High Court held:-

"(1) affirming the impugned common order of the learned single Judge to the "extent it sets aside the common award dated 17.5.2005 of the Industrial Tribunal;

(2) The further findings and directions issued through the impugned common order are vacated;

(3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five(5) months from the date of receipt of a copy of this order; and,

(4) the parties to make appearance before the Tribunal on the given date."

Hon'ble High Court of Andhra Pradesh in WA No.1268/2014 and other batch, held that, " *Hearing the learned senior counsel for the SBI and the Learned Senior Counsel for the contesting unofficial respondents, we see that while the learned single Judge was justified in setting aside the award of the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and the most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned singe Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases HCJ&ARR,J WA No. 1268 of 2014 & Batch 6 have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal//The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited."*

Therefore, in compliance with order dated 20.3.2019 of Hon'ble High Court of A.P., Hyderabad passed in WA No.1268/2014, this Industrial Tribunal conducted hearing proceedings in this reference on an individual basis and both parties have been provided ample hearing opportunity during the proceeding.

The factual matrix of the present industrial dispute is as follows:

3. **The workman filed his claim statement with the averments in brief as follows**:

The petitioner, Sri Marla Yacob was working as a Messenger in the State Bank of India from 1984 to 1997. He worked until 1.4.1997 when he was stopped from working based on the orders of the respondent panels. The Petitioner belongs to Scheduled class. It is submitted that the workman joined in the services of the Management Institution as Messenger and rendered unblemished service spreading over a period of about 13 years, and by dint of hard work till his services were terminated by oral orders w.e.f. 1.4.1997. It is submitted that the Management of Bank decided to give a chance to temporarily employed personnel "found suitable for permanent appointment" by wait-listing them, by offering permanent appointment or wait-listing till such opportunity arises. It is submitted that on 17.11.1987 a Settlement was reached between All India State Bank of India Staff Federation and the Management of Bank Settlement-1. Under this Settlement, three categories of employees were listed - (a) Those who have completed 240 days in 12 months or less after 1.7.1975; (b) Those who have completed 270.days in any continuous block of 36 calendar months after 1.7.1975; and (c) Those who have completed minimum of 30 days aggregate in a continuous, block of 12 calendar months after I.7.1975. Persons who satisfy any of the above three categories were to be interviewed by a Selection Committee. The said Selection Committee determine suitability of the said candidate for permanent appointment. Therefore, the bank first had opportunity to notice and observe the work of the workmen, then prescribed certain qualification and from among the candidates satisfying the qualifications. The suitable candidates were enlisted by a Selection Committee Clause (7) of the said agreement provided that the selected candidates would be waitlisted in order of their respective categorization and the select panel he valid upto December 1991 Clause (10) of the Settlement specifically provided that henceforth. "there will be no temporary appointments in the subordinate cadre", except on a restrictive basis in the specified category, "from amongst empanelled candidates as per existing guidelines of the Bank". Clause (1) of the agreement excluded categorized persons who are ineligible. The workman further submitted that consequent upon the said agreement and the Draft, a Notification was issued in the Newspapers. The last date for responding to the advertisement was 30.8.1988. A written examination followed by viva-voce in May 1989 was held. A select panel was prepared. As per clause (7) of the Agreement (Settlement-I) the select panel was to be valid up till December, 1991. It was however, given currency and renewed upto 1997. However, this did not put to an end the legitimate claims of various persons like the workman. It is submitted that the Government of India issued Circular No. F-3/3/104/87-IR, dated l6.8.1990. By and under the said Circular, the Chief Executives of all Public Sector Banks including the management were specifically instructed that until the problem of existing temporary employees is fully resolved, no Bank be permitted to make any temporary appointments. The workman further submits that some of the persons similarly situated like the workman aggrieved by the inaction on the part of the Management Bank in not regularizing their services from out of the select panel and not clearly focusing the vacancy position, filed W.P.No. 4194/97 on the file of the Hon'ble High Court of

Andhra Pradesh. It is specifically averred in the said writ petition that the management of the Bank had failed to implement the Settlement and that it violates the various Fundamental rights guaranteed under the Constitution of India. The Hon'ble High Court by an order dated 5.3.1997 directed the Bank to implement the Settlement as amended from time to time. It also directed the Bank to carry out the terms of the Settlement before the expiry of March, 1997. The High Court also recorded a finding that the Bank cannot escape its liability of enforcement of the settlement. In view of the directions granted by the High Court in W.P. No. 4194/97 all candidates whose names appeared in the select panels prepared on the basis of the agreement entered into on 17.11.1987 under which the panel was valid upto December, 1991 and on the basis of a Settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 under which the panel was valid upto December. 1999. The other agreement dated 16.7.1988 under which the panel was valid upto 1992 and on the basis of the Settlement dated 27.10.1988 whereby the panels were made alive upto 31.3.1997 were under the bonafide impression that their cases will be considered for regularization and were living on the basis of the said reasonable expectation. Unfortunately, contrary to the directions given by the High Court on 5.3.1997 in WP No 4194/97 and contrary to the settlements entered into between the parties. The Bank issued proceedings dated 25.3.1997, 27.3.1997 and 31.3.1997 instructing the various authorities of the Management not to continue the temporary employees those who are in services of the Bank from 1.4.1997. The said order was followed by the Management. Aggrieved by the said action the workman and similarly situated candidates have filed a writ petition before the Hon'ble High Court by way of writ petition No 9206/97 seeking a declaration that the proceedings issued by the Deputy General Manager and the Assistant General Manager (respondents No.3, 4 and 5) on 25.3.1997, 27.3.1997 and 31.3.1997 as illegal and also non-continuance of the petitioners service by absorbing them in the services of the Bank as violative of Section 2(p) and 18(1) read with Rule 58 of Central Rules and sought for specific direction to the Bank to absorb them in service. The workman further submits that in the counter affidavit filed in the writ petition No. 9206/97, the Bank submitted that it has about 805 Branches in Andhra Pradesh alone. It has stated that due to exigencies of circumstances and on account of the urgent need in its Banks, it employed temporary employees in subordinate cadre. It is pertinent to mention that it does not state the urgent needs or the nature of temporary employees that it had engaged. Enquiry into the same would reveal that the stand taken by the Bank either on the ground of urgent need or of temporary employees is a facade to perpetuate unfair labour practice. It is designed to, on the one hand, keep the employees in the erroneous zone of hope and on the other to ensure that benefits that a model employer will extend under various statutes to its employees is not required to be borne out by the Bank. A reading of the counter affidavit would show that the Bank would opines that being just fair and reasonable are which obviously is reprehensible and is a facet of unfair labour practice. It is further submitted that the Bank refers in its counter affidavit to three Settlements dated 17.11.1987, 16.7.1988 and 27. 10.1988. The Bank in the guise of extending the benefits of the circular of Government dated l6.8.1990 stated in its counter affidavit as follows:

"*Government of India. vide its letter dated 16.8.1990, issued guidelines to all the public sector banks with regard to recruitment aha absorption of temporary employees in public sector bunks. The said guidelines were issued to implement on the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper.*

The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25-F may be decided by entering into a settlement with the representative union. In respect of temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the management so desired, they could enter into a conciliation settlement with the representative union. In para 6(h), it is mentioned that only those temporary employees who had put in temporary service of 90 or more days after 1.1.1982 would be eligible for considering under the scheme. Although the Government guidelines envisaged for a settlement in respect of employees who had put in temporary service of 90 or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.

As such, it could be seen that the settlements are more beneficial to the temporary employees concerned. The approach paper also specify at para 6 (c) that the Banks would provide one time opportunity to all the temporary employees and for that purpose temporary employees worked in the Bank on or after 1.1.1982 could be considered for re-employment in terms of the scheme. The respondents have gone further wherein even persons working after 1975 were also considered.

As could be seen from the above, there was a genuine effort on the part of the respondent bank to provide permanent employment for as many as possible subject to availability of the vacancies.

It is further submitted that at para (k) of the approach paper, it was made clear that this would be one time exercise in full and final settlement of all the aims and disputes for the past period in respect of temporary workmen covered by the settlement would mean that the Government of India guide lines would cover only those persons who were temporarily employed for the period specified therein and not otherwise. As such, it is submitted that the respondents have not only followed the Government of India guidelines but in fact covered cases of the employees who had worked for less than 90 days. As such, question of violation does not arise and in any case those were only broad guidelines and not directives".

It is submitted that clause (10) of the Settlement it is specifically mentioned that the workmen to be absorbed or appointed in the Bank prohibiting any temporary appointments subsequent to the date of settlement. Even the authorities want to make temporary appointments that should be made only from among the empanelled can be appointed cither for temporary vacancy or permanent vacancy except from among the empanelled candidates like the workman and that should be continued till they are absorbed. It is submitted that the respondent Management has indulged in unfair labour practices. The said practice is evident from the actions of the Management Bank. In case of similarly situated workmen like Ch. Survanarayana. B. Venkateswarlu and P. Hussain Saheb who are empanelled by an order dated 3.9.1994 with a direction that their services to be on a very restricted basis against temporary vacancies for not more than 200 days in any continuous block of 12 months so as not to give them statutory right. The caption for such selections has been brought to attention that it was for absorption of temporary employees. That is how the panels for absorption were prepared according to each category 'A', 'B' and 'C'. In view of the regularization of the workmen who served the Bank ranging between 30 days and above has a right for absorption. The same is evident from the proceedings issued by the Management wherein they have specifically mentioned that their cases will be considered for absorption as and when the vacancies arose, till such time they shall be continued on temporary basis. Contrary to the said proceedings, now the Management indulged in unfair labour practices and terminated the service of similarly situated candidates like the workman with effect from 1.4.1997. Hence, the said practice of the Management is highly arbitrary, discriminatory, contrary to their own guidelines and violative of the constitutional provisions which are guaranteed in Chapter-III of the Constitution of India. It is submitted that the workman and other similarly situated workmen who are working as on 31.3.1997 were orally asked not to come to duty from I.4.1997. In para 3 of the proceedings dated 27.3.1997 it is stated that the panels of temporary employees on daily wages/casual labour maintained by Zonal Offices stand lapsed by 31.3.1997 and reads as follows:

"3. The panels of temporary employees and daily wagers casual labour maintained by Zonal Offices stand lapsed by 31.3. 1997. Please confirm by return of post that the above instructions are meticulously complied with at your branch w.e.f 1.4.1997. Consequent on absorption of temporary employees in permanent cadre, it has been decided by the competent authority that now onwards, no further daily labour or temporary employees/appointments should be resorted to/engaged/employed. This is very important and should be meticulously followed/implemented invariably without fail":

It is submitted that there is no indication in any of the settlements as to who is the competent authority to decide about the validity or the life of the panels or to put an end to it and the so-called DGM is not stated to be the competent authority. It is submitted that the first settlement fixed the validity of the panels till 31.12.1991 never used the word that it is going to be lapsed on 1.1.1992. Similarly when the validity was extended in the subsequent settlements to be operated at least till 31.3.1997. Sometimes even without the extension of the panels would lapse after 31.3.1997, it is strange as to how the so-called competent authority or the authorities of the bank thought or decided to lapse them from 1.4.1997. It is submitted that the balance of unabsorbed candidates like the workman and the similarly situated candidates cannot more than 10% of the total empanelled candidates. Therefore, unless the Bank is able to demonstrate that the balance of unabsorbed candidates as on 31.3.1997 was only 10% of the total empanelled candidates, the theory of the lists becoming lapsed leaving no scope for absorption becomes an ingenious theory. It can be shown out of 6,932 empanelled candidates 3,178 were not absorbed and it should have been more than 10%. It is submitted that though an empanelled list was pending for absorption of such candidates on the date of first settlement, new lists of empanelled candidates in three categories were prepared by virtue of the subsequent settlements which were sought to be implemented with all seriousness. Although such panels could not be fully exhausted by the date of the last settlement dated 26.4.1991, the existing panels were enlarged by allowing others also to join such panels with supplementary panels to be used after the earlier panels of temporary employees have been exhausted. This will only mean that the bank was capable of absorbing all the cand1dates in the panels which were in existence as on 26.4.1991. It is submitted that the Banks were directed that recruitment of all temporary employees in the Clerical or Subord1inate cadres shall be stopped forthwith. In pursuance of such directions an advertisement was issued in the local Newspapers as per the settlements and based upon that panels were prepared after an interview. Two salient features of the instructions of the Government are that there must be one tine and whole time settlement to consider the absorption of such temporary employees in the existing panels and till then no Bank will be permitted to make any temporary appointment. It is submitted that the action of termination such employees like the workman by virtue of impugned proceedings without implementing the settlements would be illegal and it would be denial of unfair labour practice within the meaning of Section 2(a) of Industrial Disputes Act which cannot be allowed to be perpetuated. It is submitted that discontinuance of workmen after 31.3.1997 to serve in the Bank in any capacity amounts to retrenchment. It could not have done without notice and it violates Section 25(ff) of I.D. Act and the said action is violative of principles of natural justice guaranteed under Chapter-III of the Constitution of India. Therefore, the action of D.G.M. the so-called competent authority who has passed the impugned proceedings amounts to retrenchment of the workman without one month's notice or payment in lieu of such notice, wages for the period of notice. Thus the impugned proceedings are issued in colourable exercise of power, without jurisdiction, arbitrary, illegal and are therefore liable to be quashed. The workman submits that though the respondent management informed in its letter dated 10.10.1990, the Central Government stating that they are implementing the instructions issued in proceedings dated 16.8.1990 In fact the management failed to implement

the same for the reasons best known to them. It is further submitted that the M.O.U. dated 27.2.1997 said to have been entered into between the parties does not binds the workmen as it has no legal entity. However, the said M.O.U. has not published anywhere to brought to the notice of the workmen whose rights are being affected. In fact, when settlements were arrived at in the year 1987, the Central Government directed the respondent management to give vide publicity by its letter dated 30.11.1987 and 29.12.1987. Accordingly those settlements were brought to the notice of workmen by way of advertisement. The said process was not followed while entering into M.O.U. dated 27.2.1997, through which the affected parties like the workman was kept in dark about the lapse of the selected panels. It is further submitted that the management has failed to implement the selected, panels during its valid tenure. The management adopted the back door methods contrary to the settlements and filled up the vacancies. The same is evident from the proceedings dated 18.11.1993, a copy of the same is filed in the material papers and the same may be read as part of the Claim Petition. It is submitted that the management adhere to the procedure envisaged by the Central Government in its instructions dated 16.8.1990 in the year 1995. The same was not followed in the year 1997 despite there being vacancies. The management has followed the procedure of calling candidates through Employment Exchange instead of giving chance to the empanelled candidates like the workman herein. It is pertinent to mention here that the respondent management sent call letters to the similarly situated candidates like the workman in the month of June. 1997, subsequent to the passing of impugned termination orders. After knowing the fact that they are litigating the issue by way of dispute, the management has refused to engage those candidates, copies of call letters issued are filed herein along with Claim Petition. The workman reiterates that the panels are meant for absorption but not for termination. In view of the same a duty is cast upon the respondent management to engage the empanelled candidates like the workman even in temporary vacancies till they are absorbed permanently in regular vacancies. The workman submitted that ever since the date of his removal from service, he remained unemployee, as he could not secure any alternative employment inspite of his best efforts. Thus, the action of the respondent Management in terminating the services of the workman by oral order with effect from 31.3.1997 is unjust, illegal, opposed to principles of natural justice besides being violative of various provisions of I.D. Act and the same is liable to be set aside.

4. The Respondents filed counter refuting the averments made by the Petitioner in the claim petition, and the contention of the Respondent in brief runs as follows:

The respondent submits that the claim petition is not valid and goes against the Industrial Disputes Act, 1947. They deny the allegations made in the claim statement and demand proof of those allegations. The respondent bank used to hire temporary subordinate staff to cope with staff shortages and government-imposed restrictions. The All India State Bank of India Staff Federation advocated for temporary employees with less than 240 days of service to be considered for permanent appointments. Discussions were held between the federation and the bank, leading to a settlement that aimed to provide fair treatment to temporary employees. The settlement includes various factors, some of which are relevant to the current application.

5. On 17.11.1987, an agreement was signed between the Federation and the management Bank under Section 2(p) read with Section 18(1) of the ID Act, 1947 read with Rule 58 of Industrial Disputes (Central) Rules, 1967.

As per settlement the temporary employees were categorized into three categories, detailed as under:

i) Category 'A' :

Those, who have completed 240 days of temporary service in 12 calendar months or less after 01.07.1975.

ii) Category 'B':

Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 01. 07.1975.

iii) Category 'c':

Those, who have completed a minimum of 30 days aggregate temporary service in any calendar year after 01.07.1975 or minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 01. 07.1975.

In the initial settlement, it was agreed that temporary employees would be given an opportunity for permanent appointments in the bank for vacancies expected to arise from 1987 to 1991. However, on July 16, 1988, a subsequent agreement was reached between the Federation and the bank, extending the consideration period for vacancies from 1987 to 1992. This agreement was signed under relevant sections of the Industrial Disputes Act and its associated rules, and it will be referred to as the second settlement.

6. Later, on October 27, 1988, another agreement, referred to as the third settlement, was reached between the Federation and the bank. It introduced a new clause, 1-A, after clause 1 in the initial settlement. This clause stated that individuals engaged on a casual basis to fill in for leave or casual vacancies in positions like messengers, farrashes, cash coolies, water boys, sweepers, etc., would also be considered for permanent appointments in the bank for vacancies expected to arise from 1988 to 1992. Therefore, not only temporary employees receiving scale wages but also casual or daily wagers would be eligible for permanent absorption into the bank.

7. Government of India vide its letter dated 16.8.1990 issued guidelines to all the public sector banks with regard to the absorption of temporary employees in public sector banks. The said guidelines were issued to implement along the lines of the approach paper on the issue provided by a committee constituted in this regard. The Government of India guidelines made it clear that all the public sector banks may follow the provisions laid down in the approach paper. The approach paper specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25F of the Industrial Disputes Act might be decided by entering into a settlement with the representative union. With respect to temporary employees who had put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided, however, if the Management so desired they could enter into a conciliation settlement with the representative union. In para 6(h) it is mentioned that only those temporary employees who had put in temporary service of 90 days or more days after 1.1.82 would be eligible for consideration under the scheme. Although the Government guidelines envisaged a settlement in respect of temporary employees who had put in temporary service of 90 days or more days, the Bank by way of further concession entered into settlements even in respect of those who had put in less than 90 days.

8. According to the settlement dated November 17, 1987, temporary employees who had worked with the bank from July 1, 1975, to December 31, 1987, were given an opportunity to be considered for permanent appointment against future vacancies. The eligible candidates were categorized into three groups based on their completed days of service: Category A (240 days), Category B (270 days), and Category C (70 days). The waitlisted candidates' panel would remain valid until December 31, 1991. Through a modification in the second settlement on July 16, 1988, the qualifying service date was extended to July 31, 1988, instead of December 31, 1987. An advertisement was issued on August 1, 1988, calling for applications from temporary employees who received scale wages, region-wise, to fill the vacancies in different regions.

9. The third settlement on October 27, 1988, was a result of the union's advocacy for casual or daily wage workers. It was decided to consider all candidates for vacancies likely to arise between 1988 and 1992. While the number of vacancies in some regions exceeded the waitlisted temporary employees, the Chennai circle was an exception as there were more waitlisted temporary candidates than available vacancies.

10. On January 9, 1991, the fourth settlement was reached, extending the validity of the panel from 1991 to 1994. After December 31, 1994, the remaining candidates on the panel would have no claim. Following the third settlement, the bank issued an advertisement on May 1, 1991, inviting applications from casual/daily wage workers for consideration for permanent appointment. This created concerns among temporary employees who felt threatened if a common list was created. However, if the casual daily wagers were placed at the end of the list, there would have been no cause for concern.

11. In response, the SBI Employees Union filed a writ petition (Writ Petition No.7872 of 1991) seeking relief to operate the waitlist based on the August 1, 1988, advertisement and not to operate any list based on the May 1, 1991, advertisement. An interim stay was granted regarding the latter aspect, which lasted for more than eight years until July 23, 1999. Consequently, no list of casual posts/daily wage workers could have been drawn up during this period, and the list of temporary employees should have been in operation. The writ petition was finally disposed of on July 23, 1999, by which time the relief sought in the petition would have been implemented.

12. The 5th settlement was arrived at on 30th July 1996 requiring the panel to be kept alive up to 31st March, 1997 and this was in respect of the vacancies which became available up to 31st December 1994.

13. The respondent submits that the petitioner has not worked for more days than those who have been absorbed into the vacancies as agreed upon. They deny the petitioner's claim of continuous years of work and state that the petitioner, who has worked for less than 240 days in a 12-month period from 1975 to 1988, has no right to seek absorption in the bank except under the settlements. The case of the petitioner has already been considered under several settlements, and therefore, all the provisions and terms of those settlements are binding on them. The respondent submits that the applicant and other ex-temporary employees do not have an independent right, and their claims are based solely on the settlements. The preparation and maintenance of panels are in compliance with the agreed terms of the settlements. The panels, including the applicant, have ceased to exist after the designated period, and the remaining candidates have no right or claim against the bank. The settlements explicitly stated that the panels would not be kept alive until all candidates were absorbed. The applicant is barred from questioning the validity of the settlements after accepting the benefits and empanelment. According to the settlement dated January 9, 1991, vacancies until December 1994 were to be filled based on seniority from the 1989 panel. After that, the panel lapsed, and the remaining candidates have no claim for permanent absorption. The same applies to the 1992 panel. The respondent submits that only the temporary service rendered from January 1, 1975, to July 31, 1988, is considered for permanent absorption, and days worked after that period are not counted since the panels had already lapsed. The bank never promised to absorb all candidates in the panel, as the advertisement clearly stated that candidates would be considered for absorption in vacancies until 1992. According to the respondent, the vacancies were identified and the ex-temporary employees in the panels were absorbed based on seniority, as per the settlements between the Federation and the management Bank. The respondent submits that mere empanelment does not guarantee absorption

for the petitioners, and keeping the panels alive after March 31, 1997, goes against the settlements. The respondent submits that the settlements between the State Bank of India and the All India State Bank of India Staff Federation have the force of law and are binding on the parties. The petitioners themselves have acted upon the settlements by being on the panel, and therefore, they are bound by the terms of the settlements. The maintenance of panels is in line with the agreed terms of the settlements, and the Bank has strictly adhered to these terms. The present application is based solely on the settlements and not on any independent right or provision of the Industrial Disputes Act. The panels under the settlements had a specific time limit, and this term cannot be modified in any legal proceedings. Therefore, those temporary employees who could not be accommodated due to lack of vacancies have no further rights for regularization under the settlements or otherwise. The bank has fully complied with the settlements, and the mentioned circulars and letters were merely directives to discontinue the practice of engaging temporary employees, which was also a term of the settlements. It is submitted that some writs were filed by certain temporary employees who were also called for interview and empanelled. In writ petition No.12964/94, the Hon'ble High Court went into similar contentions in detail and the Learned Judge also referred to the settlements and subsequently held that the Petitioners therein were not entitled to any relief and the only relief they can claim is enforcement of settlements, if there is any right flowing from it or it has been violated. The relevant operative portion of the said judgement is as follows:

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not, at all the case of the petitioner that any of the terms of the settlement has been violated by the bank's management. If the Petitioner had worked in the bank on part-time basis before 31.5.94, that itself would not vest in him a right to claim that his services should be regularized on permanent basis against a full time cadre post. The claim put forth by the Petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the Petitioner to claim any right which flows from the settlement between the union and the bank management. As already pointed out that it is not the grievance of the Petitioner that some right which has flown from the settlement in favour of the Petitioner has been denied by the bank management. Therefore, I domestic enquiry not find any ground, let alone substantial ground, to grant the kind of relief sought for by the Petitioner. Writ petition fails and is accordingly dismissed. No costs."

The respondent submits that the settlements clearly state that the panels would cease to exist at the end of the designated period, and there would be no further temporary or casual recruitment. The relief sought by the applicant, if granted, would essentially make temporary employment permanent through a backdoor entry, which goes against the settlements, as well as Articles 14 and 16 of the Constitution. It would also deprive rightful claimants of their chances through proper recruitment procedures. The settlements were intended as a one-time measure to end the practice of temporary engagement, and the rights of the applicant were determined by these settlements. Therefore, there is no legitimate expectation or estoppel, as contractual rights arising from an industrial settlement take precedence. The bank did not make any statement or representation guaranteeing permanent appointment, as clearly stated in the advertisement issued pursuant to the first settlement, which outlined the process of being considered for permanent appointment and being wait-listed based on suitability and subject to vacancies, with the waitlist valid until 1991.

14. The ex-temporary employees in the panels filed a writ petition before the High Court of Andhra Pradesh, which was initially allowed by the Single Judge. However, the bank appealed this decision, and the Division Bench of the High Court set aside the Single Judge's order. The ex-temporary employees then filed a Special Leave Petition before the Supreme Court, which was also dismissed. Therefore, the reference to the Single Judge's judgment in the writ petition is irrelevant, as it has been overturned. The petitioner has not worked for the required 240 days in any preceding 12-month period, so the reference to Section 25F of the Industrial Disputes Act is not relevant. The petitioners' claim regarding their service and educational qualifications require strict proof. The allegation of termination is incorrect, as the vacancies were filled based on seniority, and the non-engagement of the petitioner does not constitute termination. Temporary employees are subject to the availability of work, and there is no obligation to continue their employment when there is no work. The bank has not engaged in unfair labour practices, and the settlements are binding on the petitioner, having been fully implemented without violating any provisions of the Industrial Disputes Act. The issue has been addressed in various judgments of the Supreme Court and High Courts, and the petitioner's industrial dispute lacks merit and should be dismissed.

15. The Petitioner in support of his claim examined himself as WW1 and also filed photocopies of 3 documents which were marked as Ex.W1 to W3. Ex.W1 is service certificate, Ex.W2 is Newspaper notification, Ex.W3 is the panel list. On the other hand, Respondent filed photocopies of 12 documents which were marked as Ex.M1 to M12. Ex.M1 to M4 are settlements between Respondent and All India State Bank of India Staff Federation. Ex.M5 is conciliation proceedings. Ex.M6 is another settlement. Ex.M7 is Memorandum of understanding. Ex.M8 is statement giving the particulars of 1989 messenger panel. Ex.M9 is statement of 1989 non-messenger panel. Ex.M10 is statement of 1992 panel. Ex.M11 is order of Hon'ble High Court in WA No.86/98 and Ex.M12 is order in SLP No.11886-11888.

16. On the basis of the pleadings and the submissions made by the parties, following points emerge for determination:-

I. Whether the action of the Respondent Management in terminating the services of the workman, Sri Marla Yacob, Ex-Messenger w.e.f, 31.03.1997 is legal and justified?

II. Whether the workman in terms of settlements arrived at between the Respondent Bank Management and the Federation of Employees is entitled for regularization absorption in the service of Bank?

III. To what relief, the workman is entitled for?

Findings:

17. **Points No. I & II**:- The workman claims that he had been working with the Respondent Bank in the year 1984 on temporary basis. In the year 1989, Respondent issued advertisement for calling applications from the then temporary subordinate employees for the post of messenger. The workman moved application and he received interview call letter from bank to attend the interview, workman attended interview and Respondent Bank prepared a panel list of all the successful candidates and the Petitioner's name appeared also in the panel list. The Respondent Bank utilized the services of the empanelled employees and workman on temporary basis till March 1997 and some of the empanelled employees were given permanent appointment basing on the number of days of service put up by them. Thereafter, the Respondent No.2 issued a Letter dated 25.03.1997 directing all Branch Managers not to utilize the services of the empanelled Messenger and to declare that the panel list of 1991 will lapse by 31.03.1997. Therefore, all the remaining empanelled employees as per the panel list of 1999, were denied employment after 31.03.1997. It is further submitted by the workman that Respondent No.2 issued another advertisement in the year 1991 calling application for interview from the then temporary working messengers and selected some of the candidates among the applicants and prepared another panel list of 80 employees. The said panels lapsed in March, 1997. However, surprisingly all the temporary employees as per Second panel List of 1993 were given permanent appointment and that order was issued just 15 days before the lapse of the panel List. It is further submitted that the empanelled employees of Second panel List of 1993 were juniors to the temporary employees' of first panel list of 1991 in terms of number of days of service put up by them. Therefore, the act of Respondent Bank appointing the junior employees of second panel list ignoring the senior employees of the first panel list of 1991 is discriminatory, arbitrary and illegal which goes to indicate that the Respondent Bank chose to favour the employees of second panel List of 1993 for the reason best known to the Respondent Bank.

18. On the other hand, the Respondent countered the allegations made by the workman and submitted that the persons who do not have the requisite number of days of service as per the settlement, could not be considered for permanent absorption. It is contended that the bank had never promised that all the candidates in the panel will be absorbed. In the advertisement itself it was made clear that the candidate will be considered for the absorption in the vacancies that may arise up to 1992. Since the panel list had already lapsed on 31.03.1997, and the vacancies were already filled up by absorbing the temporary attendants and daily wagers/casual employees respectively in order of their seniority in the empanelment, therefore, the consideration of engaging their services including workman could not have arise. Therefore, panel list of daily wagers prepared in the year 1992 was used for filling vacancies which arose up to end of 1994 and the said panel list automatically lapsed after the filling of the aforesaid vacancies.

19. In support of his claim, the workman has examined himself as WW1 and in chief examination, he reiterated his claim as made in his petition. In cross examination, WW1 states that he was not given any posting order at the time of joining the service nor at any other time. On the oral instruction of Branch Manager, he worked in the Branch. He further admitted in the cross examination that, "I was not sponsored by any employment exchange, did not undergo the regular process of selection before my engagement as temporary messenger in the branch. I did not work continuously. I used to work depending upon availability of work in the branch." He further states that, " The panel was prepared basing upon the number of days of service, put in by the temporary employees. Some of the temporary employees whose names were included in the panel were given regular appointment in the bank in order of their seniority in the panel. Further Petitioner states, "I did not work for 240 days in any year in my entire service in the bank". On the other hand, the Respondent has examined MW1 and in his chief examination the witness had stated that the petitioner was included in the panel list however, as the existing vacancies at that time were exhausted, his turn didn't come, and he could not be given permanent employment in the bank. All the appointments were made strictly in accordance with the settlement between the SBI management and the SBI Staff Federation. The witness has also stated that as per the seniority was determined on the basis of number of days as temporary service put in by the employee in the given period and all the appointments were made as per seniority. Witness states that the petitioner had not worked for 240 days in any year in his entire temporary service in the bank. The petitioner and other temporary employees were not terminated from service by the Bank. The vacancies were filled up on regular basis with the temporary employees from the panel list and which were expired in terms of settlement on 31.03.1997 and there were no vacancies to absorb rest of the empanelled employees.

20. In view of the above statement of witness, it manifests that, the workman did not work for 240 days continuously in any year in the service. Therefore, the protection of the provisions under Section 25 (f) of Industrial

Disputes Act, 1947 against the retrenchment is not available to the workman. The initial burden of proof was on the workman to show that he had completed 240 days of continuous service in the employment of bank from the date just preceding date of termination, but he failed to discharge his burden of proof.

In the case of **Mohan Lal v. Management BEL 1981 SCC 225, the Hon'ble Apex Court have held that**:

"Before a workman can claim retrenchment, not being in consonance of Section 25 of the ID act. he has to show that he has been in continuous service of not less than 1 year with the employer who had retrenched him from service."

"Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered period of 240 days during the period of 12 calendar service for months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine

first the relevant date, ie the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favor of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F"

Therefore, in view of the above law, the claim of the workman that Respondent has not exhausted procedure before his retrenchment from service is not tenable.

21. Further, the workman claimed that his name was included in the empanelment for regularization on temporary posts after holding interview in 1989, but he was not regularized in the service and the temporary employees junior to him in service were appointed on permanent posts from the empanelment**.** However, WW1 in cross-examinations has admitted that he was not sponsored by the Employment Exchange. He could not indicate any instance of regularizing the temporary employee junior to him from the panel. Since, as per settlements arrived at between the Federation of Bank Employees and Respondent Bank Management, the vacancies for the empanelled employees of 1989 were available which would arise upto December, 1994 and those vacancies were absorbed from the panel list 1991 in order of seniority. Therefore, due to non-availability of the vacancies, and the workman not having the requisite number of days in service as compared to the other employees who were ranked senior to him in the list, could not be regularized. Therefore, workman being junior to other workmen in the panel, could not be granted regularization/absorption as a permanent employee in the Bank. It is admitted by the workman that the panel list was prepared in terms of settlement arrived at between the State Bank Management and Federation of State Bank Management Employees Association and therefore, same is binding on both parties under the provision of Section 18 (1) of the Industrial Disputes Act. Therefore, in view of the above, settlements and awards is also binding on the workman.

In the case of **National Engineers Industries v. St. of Rajasthan Civil Appeal No. 16832/1996 dated 01.12.1999, three judges bench of Hon'ble Apex Court have held**:-

"In Ram Pukar Singh and Ors. Vs. Heavy Engineering Corporation and Qrs. [1994] 6 SCC 145 this Court said that a settlement arrived at between the management and the sole recognised union of workmen under section 12(3) read with section 18 of the Act would be binding on all the workmen whether members of the union or not."

Therefore, mere enlisting the name of workman, a in the list of employees for regularization, it does not entitle workman for absorption in the Bank's service as a permanent employee unless the vacancy is available at the stage of his seniority. As per the settlement, the panel lists expired on 31.03.1997, and thereafter, the life of the panel list could not be extended. In the **Writ Petition No. 12964/1994, the Hon'ble High Court observed:-**

"It is needless to state that the settlement arrived at between the All India State Bank of India Staff Federation which is the majority union and the bank management is binding on the petitioners also. It is not at all the case of the petitioner that any of the terms of the settlement has been violated by the Bank's Management. If the petitioner had worked in the Bank on Part-time basis before 31.5.94, that itself would not vest in his a right to claim that his services should be regularised on permanent basis against a full time cadre post. The claim put forth by the petitioner in the present petition is therefore misconceived and not tenable. However, it is open to the petitioner to claim any right which flows from the settlement between the union and the Bank Management. As already pointed out that it is not the grievance of the petitioner that some right which has flown from the settlement in favour of the petitioner has been denied by the Bank Management. Therefore, I do not find any ground, let alone substantial ground, to grant the kind of relief sought for by the petitioner. Writ Petition fails and is accordingly dismissed. No costs."

Therefore, the claim of workman in the present matter can not be considered beyond the terms and conditions of aforesaid settlement between Bank Management and Federation of employees.

Further, in the case **of State of U.P. v. Harish Chandra AIR 1996 SC 2173, the Hon'ble Apex Court have held**:-

"Notwithstanding the aforesaid Statutory Rule and without applying the mind to the aforesaid Rule, the High Court relying upon some earlier decisions of the Court came to hold that the list does not expire after a period of one year which on the face of it is erroneous. Further question that arises in this context is whether the High Court was justified in issuing the mandamus to the appellant to make recruitment of the Writ Petitioners. Under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which in contrary to law. This being the position and in view of the Statutory rule contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included in the select list prepared on 4.4.87 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist."

Similarly in the case of **Syndicate Bank and other Vs. Shankar Paul AIR 1997 SC 3091, it was held** :

"Temporary were made from the empanel of eligible candidates prepared by calling names from employment exchange, the empanel was valid for only year. When the said employee claimed permanent absorption in service, the Apex Court has held that, whatever conditions regarding these empanelled candidates had they come an end on the expiry of one year."

In the present matter also, since the panel list 1989, which was prepared for the vacancies arising up to December 1994, its life expired on 31.03.1997, and it could not be extended after the said expiry date. Further, the panel list exhausted due to from the vacancies available upto 1994 with the absorption of empanelled senior employees. Thus, the workman being junior in that panel list seniority could not get regularization / absorption in the service. Although numerous pleas have been taken by the Petitioner in his claim statement, but as per settled law, here, we are confined to the reference through which the dispute of dismissal of workman has been referred to the Tribunal for adjudication. In view of fore gone discussion, workman failed to prove his claim as alleged in his petition against the dismissal from service as well as claim for regularization and as such, the action of the Respondent bank in dismissing the services of Sri Marla Yacob, Ex-Messenger by way of oral orders w.e.f. 31.3.1997 is justified.

Points No. I & II is answered accordingly.

22. Point No. III:-

In view of the findings given in Points No. I & II, the claim of the workman against the dismissal order and for regularization of his service in Respondent Bank is unfounded and devoid of merits. Therefore, the workman is not entitled for any relief of reinstatement or regularization in the employment of Respondent Bank. Hence, his claim petition is liable to be dismissed.

ORDER

In view of the fore gone discussion, it is held that the action of the Respondent bank in dismissing the services of Sri Marla Yacob, Ex-Messenger by way of oral orders w.e.f. 31.3.1997 is justified. Hence, the Petitioner is not entitled for any relief as prayed for and consequently petition stands dismissed. Reference is answered accordingly.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 17th day of November, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Marla Yacob	MW1: Sri K. Bala Kotaiah

Documents marked for the Petitioner

Ex.W1:	Photocopy of service certificate
Ex.W2:	Photocopy of newspaper notification
Ex.W3:	Photocopy of panel list

Documents marked for the Respondent

Ex.M1:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.17.11.87
Ex.M2:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.16.7.88

Ex.M3:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.27.10.1988
Ex.M4:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.9.1.1991
Ex.M5:	Photocopy of conciliation proceedings before the Regional Labour Commissioner(C) dt.9.6.1995
Ex.M6:	Photocopy of settlement between Respondent and All India State Bank of India Staff Federation dt.30.7.1996
Ex.M7:	Photocopy of Memorandum of understanding dt. 27.1.1997
Ex.M8:	Photocopy of statements giving the particulars of 1989 messenger panel.
Ex.M9:	Photocopy of statement of 1989 Non0messenger panel
Ex.M10:	Photocopy of statement of 1992 panel
Ex.M11:	Photocopy of order of Hon'ble High Court in WA No.86/98 dt. 1.5.98
Ex.M12:	Photocopy of order in SLP No.11886-11888 of 1998 dated 10.8.98

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.